

REHABILITATION FOR LICENSURE ORDINANCE
Ordinance # 11-400-10

Article I. Purpose; Authority; Findings

1.01. *Purpose.* The purpose of this Ordinance is to establish procedures and uniform standards for the Regulatory Agency to determine that a Tribal Member is not likely to again engage in any offensive or criminal course of conduct, and that the public good does not require that the Tribal Member be denied licensure for employment with a Gaming Enterprise of the Tribe.

1.02. *Authority.* The Tribal Council enacts this Ordinance in accordance with the following authority:

- a. The Tribal Constitution, Article IV, Section 7 (j), provides that Tribal Council may take action, not inconsistent with this Constitution or Federal law, which shall be necessary and proper to carry out the sovereign legislative powers of the Tribe;
- b. The Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) authorizes a Compact between the Little River Band of Ottawa Indians and the State of Michigan to govern the operation of Class III gaming within the jurisdiction of the Tribe;
- c. The Tribal-State Gaming Compact (73 Fed. Reg. 21361, April 21, 2008), Section 4(D)(3) provides that the Tribe may determine that a Tribal Member is not likely to again engage in any offensive or criminal course of conduct, and that the public good does not require that the Tribal Member be denied licensure for employment with a Gaming Enterprise of the Tribe.

1.03. *Findings.* The Tribal Council finds that:

- a. a strong tribal economy creates jobs that bring prosperity to tribal families, promotes education among tribal children, provides security for tribal elders, and sustains stable tribal communities;
- b. to establish, sustain and advance a robust Tribal economy it is fundamental to enact public policy that provides employment opportunities for members of the Little River Band of Ottawa Indians;
- c. the Tribal government, and its enterprises, are in the best position to implement employment practices that ensure tribal community participation in a tribal workforce to reinforce and strengthen the tribal economy;
- d. as a condition of employment, employees of the Gaming Enterprise of the Tribe, the largest public employer within the Tribe's jurisdiction, are subject to licensure requirements in accordance with the Tribal-State Gaming Compact and the Gaming Ordinance #10-400-01;
- e. Tribal Members are disproportionately denied licensure because there is no process enacted for the Regulatory Agency to make determinations of Rehabilitation for licensure.
- f. to encourage Tribal Member employment within the Gaming Enterprise(s) of the Band there must be a mechanism that allows a Tribal Member to establish that their past convictions are not indicative of their current or future behavior, that they do not pose a threat to the integrity of gaming, and that the public good is not served by denying that Tribal Member licensure.

- g. it is in the best interest of the Tribe to provide uniform standards and procedures authorizing the Regulatory Agency to make determinations of Rehabilitation for licensure by ordinance.

Article II. Adoption; Amendment; Repeal; Severability

- 2.01. *Adoption.* This Ordinance is adopted by Tribal Council Resolution #11-0413-115.
- 2.02. *Amendment.* This Ordinance may be amended by the Tribal Council in accordance with the Constitution and any rules set forth governing amendment of laws of the Little River Band of Ottawa Indians.
- 2.03. *Repeal.* This section is reserved for future provisions.
- 2.04. *Severability.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Article III. Definitions. As used in this Ordinance, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings:

- 3.01 The word “*shall*” is always mandatory and not merely advisory.
- 3.02. *Compact* means the Compact between the Little River Band of Ottawa Indians and the State of Michigan providing for the conduct of Tribal Class III gaming by the Little River of Band of Ottawa Indians.
- 3.03. *Rehabilitation* means the exclusion of the effect a specific set of facts and circumstances that form the basis of a Specific Disqualifying Circumstance.
- 3.04. *Gaming Enterprise* means any commercial enterprise of the Tribe authorized to engage in gaming, and all ancillary commercial activities within the gaming (facility(ies) and other improvements constructed for the conduct of gaming.
- 3.05. *Gaming Ordinance* means the ordinance authorizing and comprehensively and preemptively regulating the terms and conditions under which Class II and Class III gaming may be conducted on the lands of the Tribe.
- 3.06. *Regulatory Agency* means the Little River Band of Ottawa Indians Gaming Commission, created by Ordinance Number 04-400-04, or such other Gaming regulatory body created by Ordinance.
- 3.07. *Specific Disqualifying Circumstance* means those circumstances, as defined in the Gaming Ordinance, which determine that an applicant is ineligible for licensure as an employee of a Gaming Enterprise.
- 3.08. *Tribal Member* means an individual enrolled in the Little River Band of Ottawa Indians.

Article IV.; Rehabilitation; Finding; Grant; Effect; Limits; Bars; Denial.

- 4.01. *Rehabilitation.* The Regulatory Agency for the Little River Band of Ottawa Indians is hereby authorized to make a determination of Rehabilitation to remediate the effect of a Tribal Member’s Specific Disqualifying Circumstance(s) in the course of a licensing proceeding of the Regulatory Agency in accordance with provisions of the Gaming Ordinance.
- 4.02. *Finding of Specific Disqualifying Circumstance.* Where the Regulatory Agency, in the normal course of its background investigation for new, renewal, or revoked licensure of a Tribal Member licensee or applicant, finds a Specific Disqualifying Circumstance, the background

investigator shall immediately determine whether the subject Specific Disqualifying Circumstance is barred from Rehabilitation as provided by this Ordinance, the Gaming Ordinance or the Compact.

- a. Where the Specific Disqualifying Circumstance is NOT barred from Rehabilitation the investigator shall recommend to the Regulatory Agency that Rehabilitation be granted for that Specific Disqualifying Circumstance.
- b. Where the Specific Disqualifying Circumstance is barred from Rehabilitation, the investigator shall recommend to the Regulatory Agency that Rehabilitation for that Specific Disqualifying Circumstance be denied.
- c. Where the Specific Disqualifying Circumstance arises from a case of license renewal or license revocation proceeding and the Specific Disqualifying Circumstance is NOT barred from Rehabilitation, the Gaming Enterprise shall reserve the Tribal Member's employment position for him or her until the conclusion of the license renewal or license revocation proceedings, including Tribal Court review, as provided by this Ordinance;

4.03. *Grant of Rehabilitation.* The Regulatory Agency shall grant Rehabilitation to a licensure applicant where it has determined the following:

- a. The licensee applicant is a member of the Little River Band of Ottawa Indians; and
- b. The Regulatory Agency, in the normal course of its background investigations made pursuant to licensing procedures, has found a Specific Disqualifying Circumstance that will otherwise deny licensure; and
- c. The underlying basis for the Specific Disqualifying Circumstance is not barred from Rehabilitation as provided in this Ordinance, the Gaming Ordinance, or the Compact ; and
- d. The Tribal Member has not again:
 1. been arrested, or charged, with the same criminal offense that is the basis of the Specific Disqualifying Circumstance; or
 2. engaged in the same offensive or criminal course of conduct that is the basis of the Specific Disqualifying Circumstance.

4.04. *Effect.* Rehabilitation shall have the effect of exempting a finding of a Specific Disqualifying Circumstance from consideration by the Regulatory Agency in course of its normal licensing procedures pursuant to provisions of the Gaming Ordinance.

4.05. *Limitations Of Rehabilitation.* Rehabilitation shall be granted only for the purpose of licensure by the Regulatory Agency and the Tribal Member remains subject to all provisions of the Gaming Ordinance without any prejudice or bias arising from that grant of Rehabilitation.

4.06. *Rehabilitation Barred.* The Regulatory Agency shall not grant Rehabilitation where the underlying basis for the Specific Disqualifying Circumstance is based on conduct demonstrating habitual offender status, such that, within the relevant licensing look-back period, there are two prior Certificates of Rehabilitation granted for the same underlying basis of the current Specific Disqualifying Circumstance.

4.07. *Denial of Rehabilitation.* If the Regulatory Agency fails to grant Rehabilitation it shall set forth, in writing, its findings and reasoning in determining against Rehabilitation for the Specific Disqualifying Circumstance in a Notice of Denial of Rehabilitation that shall be delivered to the Tribal Member in writing, with notice of the right to a Rehabilitation Hearing, no later than seven (7) days after the date of its determination.

Article V. Certificate of Rehabilitation; Irrevocability;

5.01. *Certificate of Rehabilitation.* Upon a determination of Rehabilitation, the Regulatory Agency shall immediately cause to issue a Certificate of Rehabilitation which sets forth the following:

- a. information sufficient to identify the Tribal Member;
- b. a declaration of Rehabilitation by the Regulatory Agency;
- c. the license category and employment position for which licensure was sought and for which Rehabilitation was granted;
- d. the relevant dates and factual data sufficient to identify the character and nature the underlying facts and circumstances which form the basis of the Specific Disqualifying Circumstance;
- e. a disclaimer that the document is valid only for the purpose of licensure for the employment of the Tribal Member with a Gaming Enterprise of the Little River Band of Ottawa Indians.

5.02. *Self Authentication.* The Certificate of Rehabilitation shall be self-authenticating by means at the Regulatory Agency's discretion.

5.03. *Irrevocability.* Once Rehabilitation is granted with respect to a Specific Disqualifying Circumstance it cannot be revoked or nullified by any action of the Regulatory Agency and must be respected in perpetuity in all licensure proceedings of the Regulatory Agency.

Article VI. Right to Hearing; Reservation of Rights; Hearing Election; Presumption; Burden; Evidence.

6.01. *Right to a hearing.* Where a Tribal Member has been denied licensure upon a finding of Specific Disqualifying Circumstances, and the Regulatory Agency has failed to grant Rehabilitation, he or she shall receive immediate notice of the right to a separate Rehabilitation Hearing before the Regulatory Agency.

6.02. *Reservation Of Rights.* No provision of this Rehabilitation Ordinance shall abrogate any right to appeal a licensure decision of the Regulatory Agency pursuant to the licensing provisions of the Gaming Ordinance, nor subrogate any proceeding under the licensing provisions of the Gaming Ordinance.

6.03. *Rehabilitation Hearing Election.* For the convenience of the parties, the Regulatory Agency and the Tribal Member may agree to conduct the Rehabilitation Hearing in lieu of the licensure appeal hearing that is provided in the Gaming Ordinance.

6.04. *Presumption of Rehabilitation.* To give full effect to the purpose of this Ordinance, the Regulatory Agency shall presume that with respect to a finding of a Specific Disqualifying Circumstance, that the Tribal Member has been rehabilitated and is capable of conforming his or her future behavior to the standards of licensure.

6.05. *Burden of Proof.* At the Rehabilitation Hearing, the Regulatory Agency shall have the burden to demonstrate that its determination denying Rehabilitation of a Specific Disqualifying Circumstance is supported by competent, material and substantial evidence on the record.

6.06. *Evidence.* The Regulatory Agency shall accept all evidence presented by the Tribal Member to rebut a determination by the Regulatory Agency denying Rehabilitation of Specific Disqualifying Circumstances.

6.07. *Notice of Disposition of Rehabilitation Hearing.* The Regulatory Agency shall set forth in a written Notice of Disposition its determination, supported by its findings and its reasoning. The Notice of Disposition shall be forwarded to the Tribal Member, with notice of the right to appeal to Tribal Court, within seven (7) days of the Rehabilitation Hearing.

Article VII. Appeal To Tribal Court.

7.01. *Appeal to Tribal Court.* The Tribal Court shall hear appeals from adverse decisions of the Regulatory Agency made at a Rehabilitation Hearing. Appeals shall be made in writing to the Tribal Court by the Tribal Member within 14 days of the date of his or her receipt of the Regulatory Agency's decision.

7.02. *Documents to Be Forwarded to Tribal Court on Appeal.* The Regulatory Agency, upon receipt of notice of appeal by the Tribal Court Clerk, shall immediately cause to be copied and submitted, the following documents:

- a. The application for licensure, including all evidence and documents contained therein; and
- b. The record of hearing of the Rehabilitation Hearing; and
- c. The Notice of Denial of Rehabilitation forwarded to the Tribal Member of the determination of the Regulatory Agency; and
- d. The Notice of Disposition of Rehabilitation Hearing forwarded to the Tribal Member after the Rehabilitation Hearing.

7.03. *Examination of the Record; Request for Briefs.* The Tribal Court shall permit all parties to examine records submitted on appeal and to provide briefs or other explanatory memorandum or responses to briefs or other explanatory memorandum.

7.04. *Burden of Proof.* The Regulatory Agency shall have the burden to show cause as to why there is insufficient evidence on the record to support a determination of Rehabilitation..

7.05. *Standard Of Review.* The Tribal Court shall review de novo, adverse determinations of the Regulatory Agency made at a Rehabilitation Hearing.

7.06. *Tribal Court Decision.* The Tribal Court shall have jurisdiction to decide:

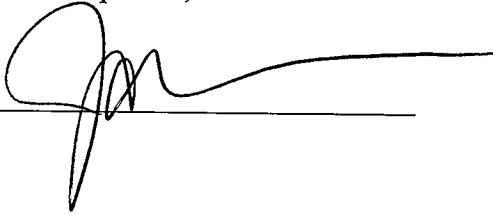
- a. To uphold the Regulatory Agency's decision; or
- b. To reverse the decision of the Regulatory Agency; or
- b. To remand, with instructions, cases where:
 1. the Tribal Court determines that the Regulatory Agency has incorrectly interpreted or applied this Ordinance, the Gaming Ordinance or the regulations governing licensure by the Regulatory Agency as they are applicable to the Rehabilitation Hearing; or
 2. the Tribal Court determines that the Regulatory Agency inadequately framed the Specific Disqualifying Circumstance for the purpose of the Rehabilitation hearing.

7.07. *Appeal to the Court of Appeals.* All Appeals to the Tribal Court of Appeals shall be made in writing within 14 days of notice of an adverse decision of the Tribal Court.

- a. The Tribal Court of Appeals shall hear an appeal of an adverse decision of the Tribal Court brought by an aggrieved Tribal Member.
- b. The Tribal Court of Appeals may grant leave to appeal an adverse decision of the Tribal Court brought by the Regulatory Agency.

CERTIFICATION

I, Janine M. Sam, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Emergency Amendments to the Rehabilitation for Licensure Ordinance adopted by the Tribal Council on April 13, 2011.



A handwritten signature in black ink, appearing to be 'Janine M. Sam', written over a horizontal line.

[Seal]

